



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tek-Lite, Inc.
File: B-227843.6
Date: June 9, 1988

DIGEST

1. Addition of evaluation factor to offered price for item manufactured in accordance with value engineering change proposal (VECP) is proper where solicitation provided for addition of factor to offer of VECP item; fact that proposal stated it was for standard item, not VECP item, does not preclude addition of factor where it is clear from offer as a whole that offered item will be manufactured in accordance with VECP.

2. Agency's alleged prior acceptance of value engineering change proposal (VECP) item under contract for standard item does not eliminate distinction between the two items and thereby preclude addition of evaluation factor to offer of VECP item on future procurement; proper remedy for agency's improper acceptance of VECP items (there is no evidence of such in this case) is to stop the practice.

DECISION

Tek-Lite, Inc., protests, before award, the addition of an evaluation factor to its proposed price or any finding of nonresponsiveness of its alternate offer under request for proposals (RFP) No. 400-87-R-5564, issued by the Defense Logistics Agency (DLA) for penlight-style flashlights.

We deny the protest.

The RFP invited offers based on a standard military specification (MIL-F-7326G) or, alternatively, on the specification as modified by a value engineering change proposal (VECP), which was developed by Tek-Lite under an earlier contract. The RFP provided, under clause M24, for the addition of an evaluation factor to bids based on the VECP item, reflecting royalty fees to be paid Tek-Lite whenever the government purchases VECP items. Following an RFP amendment and reopening of negotiations for revised offers, Tek-Lite submitted an alternate offer (in addition to its previously submitted initial offer not relevant here)

042410

purportedly based on the standard military specification. In a cover letter accompanying its proposal, however, the firm essentially described its offer as meeting the VECP. Consequently, DLA proposed to add the evaluation factor to Tek-Lite's bid of the VECP items.

Tek-Lite argues that the VECP evaluation factor should not be added to its offer since DLA allegedly has accepted VECP items under prior contracts calling for delivery of military specification items; Tek-Lite maintains that, by so doing, DLA has established an interpretation removing the distinction between the VECP and military specification items. This point is significant because Tek-Lite believes firms may be gaining a competitive advantage by offering the military specification item, thereby avoiding application of the evaluation factor, and then furnishing VECP items, which are less expensive to manufacture.

In our prior decision, Tek-Lite, Inc., B-227843.2, Oct. 2, 1987, 87-2 CPD ¶ 324, ^{1/} we found that a similar allegation was without merit since there was no evidence that DLA improperly had accepted delivery of VECP items on past procurements such as the one here, where the contractor's bid was based on the standard military specification (and no evaluation factor). In response to our October decision, and to support its view of the agency's alleged interpretation of the solicitation, the protester now presents two specific contract numbers under which DLA allegedly accepted delivery of VECP items from firms awarded contracts to furnish items under the standard military specification.

Tek-Lite's argument is without merit. As we indicated in our October decision, the appropriate remedy in the event DLA improperly was accepting VECP items under contracts based on the military specification would be for DLA to stop the practice, not to prohibit DLA from applying an otherwise proper evaluation factor to VECP offers on future procurements. See Tek-Lite, Inc., B-227843.2, supra.

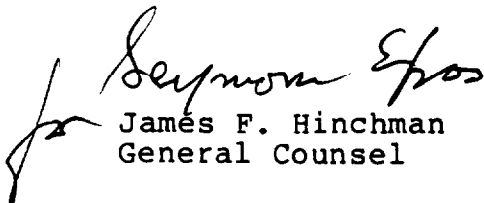
^{1/} In this decision we denied Tek-Lite's protest that the evaluation factor should not be added to Tek-Lite's initial offered price based on the VECP because Tek-Lite had developed the VECP; we held it was proper to add the evaluation factor to any offer (including Tek-Lite's) based on furnishing VECP items, since the factor reflects royalty fees that are part of the total cost to the government of purchasing VECP items. In our decision Tek-Lite, Inc., B-227843.3, et al., Nov. 6, 1987, 87-2 CPD ¶ 455, we denied Tek-Lite's request for reconsideration of our October decision.

Moreover, although it does appear DLA accepted VECP-like items under the cited contracts for the standard military items, the record indicates, and Tek-Lite has not refuted, that the nonconforming deliveries were made prior to the approval of the VECP. Thus, DLA's acceptance of nonconforming items did not result in a competitive advantage for the awardee, as described above. Thus, there is no evidence that DLA has been accepting VECP items improperly, and Tek-Lite also has presented no evidence suggesting that DLA will do so in the future.

We conclude that because the solicitation clearly provided for application of the evaluation factor to VECP offers (reflecting the royalty to be paid Tek-Lite), and Tek-Lite's offer indicated an intent to furnish VECP items (acceptance of which would entitle Tek-Lite to royalties), DLA properly determined that the evaluation factor should be applied to Tek-Lite's offer.

Tek-Lite argued after the close of the record here that the VECP evaluation factor should not be applied to a certain initial quantity of the flashlights procured since, under its VECP agreement, Tek-Lite would not receive royalties for this initial quantity (to permit the government to recoup its research and development costs.) DLA informs us that it intends to amend the solicitation to eliminate the evaluation factor for the initial quantity, as Tek-Lite requests.

The protest is denied.


James F. Hinchman
General Counsel